

SERVICE DATE – MARCH 15, 2002

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 208

Decided: March 13, 2002

In CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),¹ Environmental Condition No. 11 of Appendix Q² requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that this condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns.³

¹ In Merger Dec. No. 89, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² 3 S.T.B. at 588-90.

³ Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000. The Board granted, at the request of NS, a number of extensions of the compliance date. See Decision No. 167, served on August 22, 2000 (granting NS' request for extension of the compliance date to August 22, 2001); Decision No. 196, served on August 21, 2001 (granting NS' request for a further extension of the compliance date to February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and to May 22, 2002, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV); and Decision No. 206, served on February 22, 2002 (granting NS' most recent request for a further 1-year extension of the compliance date to February 22, 2003, for rail line segments N-

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On January 4, 2002, NS provided us with a copy of a Negotiated Agreement between NS and Page County, VA, dated October 23, 2001, and accepted by Page County on November 20, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Merger Dec. No. 89.⁴ NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by deleting the Page County receptors located outside the incorporated limits of the Towns of Stanley and Luray from the receptors identified on the Riverton Junction to Roanoke, VA line segment (N-100),⁵ and that the Negotiated Agreement between NS and Page County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Merger Dec. No. 89.⁶ Page County concurs with the request.

In view of the Negotiated Agreement between NS and Page County, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Merger Dec. No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 to delete the receptors in Page County located outside the incorporated limits of the Towns of Stanley and Luray from the receptors identified on the Riverton Junction to Roanoke, VA line segment because the noise mitigation for that community has been superseded by the NS/Page County Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

³(...continued)

079 and N-085, and to May 22, 2003, for rail line segments N-100 and N-111).

⁴ 3 S.T.B. at 357.

⁵ Environmental Condition No. 11 does not specifically reference Page County, but the Towns of Kimball, Ingham, and Shenandoah, which are listed in Environmental Condition No. 11, are in Page County. The Towns of Stanley and Luray are also in Page County but NS executed separate Negotiated Agreements with both. See Decision No. 177, served on December 5, 2000 (Town of Stanley), and Decision No. 183, served on March 30, 2001 (Town of Luray). Therefore, NS advises that its settlement with Page County applies to receptors identified by the Board as eligible for noise mitigation under Environmental Condition No. 11 in Page County (including the Towns of Kimball, Ingham, and Shenandoah) outside the incorporated limits of the Town of Stanley and the Town of Luray.

⁶ 3 S.T.B. at 607-08.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between NS and Page County, VA, dated October 23, 2001, and accepted by Page County on November 20, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Merger Dec. No. 89:

33. Page County, Virginia, Negotiated Agreement dated October 23, 2001, and accepted by Page County on November 20, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is amended to delete the receptors in Page County located outside the incorporated limits of the Town of Stanley and the Town of Luray, from the receptors identified on the Riverton Junction to Roanoke, VA line segment, because the noise mitigation for that community has been superseded by the NS/Page County Negotiated Agreement.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary